

**St. Regis Mohawk Indian Reservation  
St. Regis Mohawk Tribal Court**

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**MARCELLA DAVID,**

**Complainant/Appellant**

**DECISION/ORDER**

**13-LND-00002**

**ARLENE BAKER and**

**LOUIS ROUNDPOINT,**

**Respondents**

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**Procedural History**

On April 5<sup>th</sup>, 2013, Marcella David filed an appeal from a St. Regis Mohawk Tribal Council decision dated July 18<sup>th</sup>, 2008, regarding the Estate of Margaret Porter. Ms. David wishes to have the Tribal Council decision overturned in which the property of Margaret Porter's Estate, including her house, was transferred to Margaret Porter's children, Respondents Arlene Baker and Louis Roundpoint. In addition, Ms David asks the Court in this action to overturn the 1965 will of Mr. Louis Chubb

A 20 day civil Summons was issued by the St. Regis Mohawk Tribal Court on April 11<sup>th</sup>, 2013, that was to accompany the Notice of Appeal filed in the SRMT Court on April 5<sup>th</sup>, 2013, to be served upon the Respondents Arlene Baker and Louis Roundpoint.

On May 8<sup>th</sup>, 2013, Ms. Arlene Baker's attorney, filed with the Court an Answer and Motion to Dismiss the Appeal.

On May 15<sup>th</sup>, 2013, Marcella David filed proof of service of the Notice of Appeal and 20 day civil Summons upon Mr. Louis Roundpoint via certified mail return receipt.

Mr. Louis Roundpoint filed his Answer with the St. Regis Mohawk Tribal Court on June 4<sup>th</sup>, 2013.

**Factual Background**

Louis Chubb, in his Last Will and Testament, dated November 13<sup>th</sup>, 1965, named his daughter Margaret Porter to act as the Executrix of his estate upon his passing. In this instrument he also directed that "all the rest, residue and remainder of my estate, both real and personal, I

give, devise and bequeath to my daughter, Margaret Porter.” *See*, Louis Chubb Last Will and Testament November 13<sup>th</sup>, 1965.

Over the years Margaret Porter sold to various family members multiple parcels of property that were part of the original Louis Chubb estate which she inherited from Louis Chubb, her father. This includes a transaction from Margaret Porter transferring approximately one (1) acre to Appellant Marcella Chubb David on October 12<sup>th</sup>, 1988. This piece of property is known as Lot #703-A.

Margaret Porter passed away intestate on June 7<sup>th</sup>, 2007, leaving two heirs, her daughter Arlene Baker, and her son, Louis Roundpoint. Ms. Porter’s husband, Howard Porter, continued to reside in their home on the Estate property as a ‘Life Estate’ tenant pursuant to a 2008 SRMT letter. It can be noted that Mr. Howard Porter was not an enrolled member of the SRMT and therefore could not own or inherit property on the SRMIR in accordance with SRMT Law. *See*, SRMT LDRO (V) (B) and *Jackson v Baker*, 11-LND-00006/11-CIV-00006

On June 27<sup>th</sup>, 2007, Arlene Baker wrote to the St. Regis Mohawk Tribal Council requesting that she be “notified of any and all transactions concerning my mother’s estate, the late Margaret Chubb Porter.” *See*, June 27<sup>th</sup>, 2007 Letter to SRMT. She further states, “There will be no further transactions regarding my mother’s estate until everything has been settled between myself and my brother, Louis Roundpoint.” *Id.*

A SRMT Tribal Council Resolution #2007-77 was issued on September 25<sup>th</sup>, 2007, naming Ms. Arlene Baker and Mr. Louis Roundpoint as the “Co-Executors of the Estate of the late Margaret Chubb Roundpoint Porter”. *See*, TCR 2077-77 September 25<sup>th</sup>, 2007.

In a letter dated July 18<sup>th</sup>, 2008, from the SRMT Tribal Council to Arlene Baker and Louis Roundpoint, the SRMT Council rendered its “decision” to divide the 24.9 acres that “each of [these two heirs] are entitled to under [their] mother, Margaret Porter’s estate”, conveying 12.4 acres to Ms. Arlene Baker and 12.5 acres to Mr. Louis Roundpoint. Ms. Baker and Mr. Roundpoint were also appointed as co-owners of the house and property located at 1520 State Route 37, with the understanding that Mr. Howard Porter’s life estate interest “is not to be disturbed by this decision.” *See*, July 18<sup>th</sup>, 2008 Letter SRMT Tribal Council to Arlene Baker and Louis Roundpoint.

Appellant Marcella David, the sister of Margaret Porter, stated in a letter to the SRMT Tribal Council dated July 5<sup>th</sup>, 2011, that , “Margaret told my sister’s Ruth, Mary and I what her wishes are being of sound mind and body in the years 2005-06. Those are that Margaret did not want her daughter Arlene or her son Louie to have her house or the land that the house is on.” *See*, Marcella David Letter to SRMT Tribal Council July 5<sup>th</sup>, 2011. Ms. David further stated that, “Margaret and Howard Porter told us that if anything should happen to them the house and the land that it’s on should go back to the estate of Louie and Hattie Chubb.” *Id.*

## DISCUSSION

Appellant Marcella David brings this appeal to the SRMT Court from a SRM Tribal Council "Decision on Dividing Margaret Porter Estate" rendered on July 18, 2008.

Ms David states in her Notice of Appeal that she is "...asking the Court to make a decision on the estate of Louie and Hattie Chubb...", describing her interest in reclaiming the estate, which would include "Margaret Porters house and land" and asking to "become executor of the estate".

Appellant also states that if she were to become executor of the estate she "would make sure all family members in need would have land to build a home"; and that she wants "...the estate to remain in our family." (Notice of Appeal, p2)

Respondents Answer through their attorney Lorraine M. White, and argue: (1) that the Tribal Council "rightfully and legally determined that the estate was to be divided equally between the living heirs and children of Margaret Porter..." Respondents Arlene Baker and Louis Roundpoint; (2) that Appellant lacks legal standing to seek an appeal of the Tribal Council Resolution #2007-77; (3) that any review and determination regarding the distribution of the "estate of Louie and Hattie Chubb" does not involve Respondent Arlene Baker Roundpoint and that Appellant's claim is "untimely, overly broad and likely misplaced..." and "fail[s] to clearly state any basis for her requested relief; and that the Court lacks jurisdiction because this matter has not been presented to the SRMT Land Dispute Tribunal; and (4) that Appellant's claim must be dismissed pursuant to SRMT Rules of Civil Procedure (Rule 6) and Federal Rules of Civil Procedure [12(b)(6)] because it fails to clearly identify and state any specific injury or harm and fails to state a cause of action upon which relief may be granted.

Rule 6 of the SRMT Rules of Civil Procedure, (Section IX), states in (A), in relevant part, that "to start a civil lawsuit in Tribal Court, a person shall first file a written complaint with the Court Clerk. ..The complaint shall describe the injury or breach the plaintiff is complaining of, name or describe the person responsible for such injury or breach...and state the relief requested..." The SRMT Rules of Civil Procedure, however, do not appear to provide for dismissal of the complaint as a remedy if there is a defect in the pleading and/or jurisdictional defect .

The Court also notes that this action was initiated by a "Notice of Appeal " from the "Land Dispute Ordinance", (not a Complaint), and provides notice that Appellant "appeals to the St. Regis Mohawk Tribal Court from...the Tribal Council land dispute decision", referenced as "7-18-2008 letter dividing land to Arlene and Louis".

The SRMT Land Dispute Resolution Ordinance, (LDRO), section XV (C )(1) permits the Tribal Court to review "any appeal from a Tribal Council Final Decision, made no more than ten (10) years prior to the Effective Date of this Ordinance", (February 1, 2010, which was

sixty (60) days from the December 3, 2009 enactment of the LDRO). The LDRO defines a "Tribal Council Final Decision" in Section IV (P) as "the most recent decision rendered on a land dispute that was approved by the majority of Tribal Council at the time it was rendered; this includes decisions rendered by prior Tribal Councils within ten (10) years prior to the Effective Date of this Ordinance." LDRO Section XV also permits the Tribal Court to suspend the Rules of Civil Procedure and provides that the Tribal Court "...may request evidence or testimony as necessary to develop a full and complete record of information upon which to base its final decision..." when deciding appeals from decisions rendered by the Tribal Council. LDRO XV (C)(2) This process is different from the process used in cases which are initiated in and heard by the LDT. LDRO XV (B)(2)

Nonetheless, the Court hereby determines that it has jurisdiction to hear this appeal despite the apparent pleading/procedural defects, and will proceed to render this decision.

First, this appeal is from the Tribal Council's Final Decision rendered on July 18, 2008, which divided 24.9 acres of Margaret Porter's Estate in a "roughly one-half" manner, granting Respondent Arlene Baker Roundpoint 12.4 acres and granting Respondent Louis Roundpoint 12.5 acres; and granting both Respondent's "co-ownership in the house and property", subject to Howard Porter's "life estate". The record clearly supports a finding that Respondents Arlene Baker and Louis Roundpoint are the only surviving children of Margaret Chubb Roundpoint Porter. See, *Jackson v Baker, supra*

Appellant's 'relief request' also appears to be asking the Court to revisit grantings/conveyances of land made by Appellant's sister, Margaret Porter as Executor of the Estate of their father Louie Chubb, (presumably transactions which occurred in 2011-2012); and for the Court to appoint Appellant to "become executor of the estate". (Notice of Appeal, p2)

The Court will first address the appointment of Margaret Porter by her father, (and Appellant's father), Louis Chubb, as Executrix of Louis Chubb's Estate.

The record reflects that on November 13, 1965, Appellant's father Louie Chubb executed a document entitled Last Will and Testament, signed before two witnesses in the Town of Bombay, Franklin County. That document explicitly names Mr. Chubb's daughter Margaret Porter as Executrix of the estate. This Last Will and Testament also directs the will's Executrix to pay debts and funeral expenses as soon as practicable after his demise, further stating:

"All the rest, residue and remainder of my estate, both real and personal, I give, devise and bequeath to my daughter Margaret Porter." *Emphasis added*

Although it is unclear as to whether Appellant is challenging the appointment of Margaret Porter as Executrix, Appellant has failed to set forth any basis for disregarding or setting aside the Last Will and Testament of Louis Chubb which named daughter Margaret Porter as executrix of the Estate and conveyed the remainder of the Estate to Margaret Porter, as noted above. Further, the Court notes that there is nothing in the record indicating that Appellant or any other individual has challenged Mr. Louis Chubb's 1965 Will at any time during the 48 year period since the Will was executed.

Appellant also challenges land conveyances made by Margaret Porter, either as Executrix of the Louis Chubb Estate or as the heir/owner of that property.

The record reflects that over the years Ms. Porter distributed/conveyed a number of parcels from the land she inherited from her father to various family members, including her sister, Appellant Marcella David. This would be recorded by an October 12, 1988, SRMT Use and Occupancy Deed giving Appellant Marcella Chubb David a one acre lot, now designated as Lot #703-A. Perhaps Ms Porter did so in accordance with her father's wishes or perhaps she did so of her own accord – we may never know- but, most importantly, as the heir to whom "all the rest, residue and remainder of [the] estate" passed, Margaret Porter was the owner of the remainder of the estate upon her father's demise, as her father designated in his Last Will and Testament. Again, Appellant has presented no argument to support disturbing any land conveyances or transactions made by Margaret Porter, including the one made to her. Further, we see no language in the 1965 will of Louis Chubb requiring Margaret Porter to only make land distributions within the Chubb family. Nonetheless, the record of this case and the 'companion case' of *Jackson v Baker*, tend to show that nearly, if not all, of the Louis Chubb Estate has stayed within his extended family,

Based upon the foregoing, this Court finds that the estate of Hattie and Louis Chubb was distributed pursuant to Louis Chubb's direction as set forth in his Last Will and Testament, dated November 13, 1965.

Appellant also seeks to challenge the intestate distribution of (her sister), Margaret Porter's Estate, (including Margaret Porter's house and land), and prevent the distribution of that Estate's land to Respondents. The Court has recently rendered a decision on a related issue in *Jackson v Baker-Roundpoint*, 11 LND-00006/11 CIV 00006

Appellant's challenge appears to require that the Court review and scrutinize two separate Tribal Council Decisions: (1) Tribal Council Resolution #2007-77, which designated Margaret Porter's two children, Respondents Cecelia Arlene Roundpoint- Baker and Louis Roundpoint, as Co-Executors (or Co-Administrators) of their mother's estate, (now known as the Margaret Porter Estate); and (2) the July 18, 2008, letter referencing "Decision on Dividing Margaret Porter Estate" which divided the remaining Estate land between Respondents.

On June 7, 2007, Margaret Porter passed away intestate, leaving no will. At that time Ms. Porter's husband, Howard Porter, (not a Tribal member), was residing with her on Lot # 681, a 1.636 acre parcel located on the SRMIR. In August of 2007, the SRMT Council granted Mr. Porter a "life estate" and he continued to reside on the property until his death in 2010.

On September 25, 2007, Tribal Council Resolution #2007-77 was adopted, designating Margaret Porter's two children, Respondents Cecelia Arlene Roundpoint- Baker and Louis Roundpoint, as Co-Executors, (co-Administrators) of the Estate of Margaret Chubb Roundpoint Porter. This Court finds that because the Tribal Council has the authority to appoint Administrators of Estates, the September 25, 2007, Tribal Council Resolution #2007-77 which appointed, named and designated Respondents Cecelia Arlene Roundpoint Baker and Louis Roundpoint as Co-Executors, (or co-administrators), of their mother Margaret Porter's Estate is a proper exercise of that authority.<sup>1</sup>

As to the Tribal Council's decision/letter dated July 18, 2008, which divided Margaret Porter's remaining 24.9 acres between her children, Respondents Roundpoint and Baker, this Court finds that the July 18, 2008, decision/letter is a "Tribal Council Final Decision", as defined in the LDRO, which was made "no more than ten (10) years prior to the February 1, 2010, effective date of the LDRO. Therefore, the Court must apply the LDRO in this review of the intestate distribution of Ms Porter's property.

The Land Dispute Resolution Ordinance, (LDRO), provides in relevant part, as to Intestate Distribution, that:

"-when a Tribal member dies without leaving a Will, their real property located on the Reservation shall pass to Tribal members as follows:(1)The surviving Tribal member spouse shall inherit the possessory interest formerly held by the deceased spouse.(2) If there is no surviving Tribal member spouse, the surviving Tribal member children shall receive equal possessory interests in tribal lands formerly held by a deceased tribal member parent."  
*LDRO(V)(E), Emphasis added.*

At the time of Ms. Porter's passing in June of 2007, her spouse, Howard Porter, was not a "surviving Tribal member spouse" and could not inherit the possessory interest

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<sup>1</sup> In the Court's recent decision in *Jackson v Baker Roundpoint*, the Court both affirmed the appointment of these same Respondents as Executors, and found that Arlene Baker and Louis Roundpoint would be entitled to the land identified as Lot # 681. This was NOT because they were designated administrators or executors, but rather, through the recognition and application of the SRMT LDRO

formerly held by Margaret Porter of SRMIR lands. See, *Jackson v Baker-Roundpoint, supra*. According to the LDRO if there is no surviving Tribal member spouse, the surviving Tribal member children shall receive equal possessory interests in tribal lands formerly held by a deceased tribal member parent.

The LDRO also states in Section (V)(E)(6), that:

In the event that a deceased Tribal member has no Tribal member spouse, children, grandchildren or parents, the surviving brothers and sisters, then the surviving nieces and nephews shall receive equal possessory interests in tribal land formerly held by the deceased tribal member". *Emphasis added.*

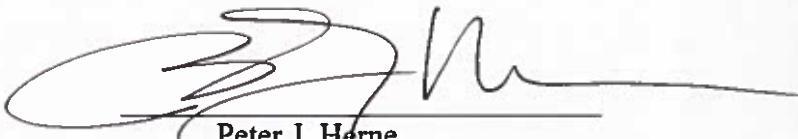
Although the LDRO provides, as noted, that under some circumstances siblings may inherit an interest in tribal land formerly held by a deceased tribal member, clearly the facts in this case do not support this interpretation. Appellant cannot override the rights of Ms. Porter's children as provided for in the LDRO. The land in issue was also a part of Louis Chubb's Estate and the Court has determined that it will not override his 1965 will.

As noted in the companion case of *Jackson v Baker, supra*, this Court recognizes that the same analysis which upholds the conveyance of the 1.6 acre parcel to Arlene Baker and Louis Baker, applies to the conveyance of Margaret Porter's remaining 24.9 acres to her children, Respondents Baker and Roundpoint, in this case. These transfers will be upheld in this appeal because the Tribal Council Decision/letter dated July 18, 2008, which divided the property into equal possessory interests between the surviving Tribal member children complies with the LDRO requirements as to intestate distribution of property, and not because of Respondents' status as Administrators/Executors of their mother's estate.

The Court finds that there exists no lawful or equitable basis to disturb the intestate distribution of Ms. Porter's estate and hereby denies the relief requested.

This constitutes the Decision and Order of the Court

Signed by my hand this 12<sup>th</sup> day of December, 2014.

  
Peter J. Harne  
Chief Judge, SRMT Court

